

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK**

BEN GARY TREISTMAN,

Plaintiff,

**1:12-cv-1897
(GLS/CFH)**

v.

**VALERIE LYN WACKS, ESQ. et
al.,**

Defendants.

ORDER

Pending before the court is an application for an order to show cause filed by plaintiff *pro se* Ben Gary Treistman, individually and as “[p]arent and [n]ext [f]riend for” A.T. (See Dkt. No. 12; Compl., Dkt. No. 1.) Before that application may be considered, however, the court must resolve an issue regarding Treistman’s purported representation of A.T.¹ See *Cheung v. Youth Orchestra Found. of Buffalo, Inc.*, 906 F.2d 59, 61 (2d Cir. 1990) (“[N]o issues concerning th[e] litigation should be decided until the counsel issue is resolved.”). The Complaint indicates that Treistman and A.T. are suing in their individual capacities; Treistman also purports to bring the

¹ The court notes that this issue may be raised *sua sponte*. See *Oltremari ex rel. McDaniel v. Kan. Soc. & Rehab. Serv.*, 871 F. Supp. 1331, 1332 (D. Kan. 1994).

action as parent and next friend of A.T. as mentioned above. (See generally Compl.)

Although sufficient facts—including A.T.’s age and place of domicile—are not now before the court to fully address the issue, it is clear that “[a] minor or incompetent person normally lacks the capacity to bring suit for h[er]self,” and that a next friend cannot represent a minor or incompetent person without an attorney to conduct the litigation. *Berrios v. N.Y.C. Hous. Auth.*, 564 F.3d 130, 134 (2d Cir. 2009). In light of the foregoing, the parties shall file briefs of five (5) pages or less and any supporting affidavits, declarations, or exhibits by Thursday, February 21, 2013 specifically addressing A.T.’s age and place of domicile, and any other matters they deem relevant to Treistman’s purported representation of A.T. Because the litigation cannot proceed until this issue is resolved, the application for an order to show cause is stayed.

ACCORDINGLY, it is hereby

ORDERED that the parties shall file briefs of five (5) pages or less and any supporting affidavits, declarations, or exhibits by Thursday, February 21, 2013 specifically addressing A.T.’s age and place of domicile, and any other matters they deem relevant to Treistman’s purported

representation of A.T.; and it is further

ORDERED that the application for an order to show cause (Dkt. No. 12) is **STAYED**; and it is further

ORDERED that the Clerk provide a copy of this Order to the parties.

IT IS SO ORDERED.

February 7, 2013
Albany, New York

Gary L. Sharpe
Gary L. Sharpe
Chief Judge
U.S. District Court